

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

VERONICA MCCALLUP

PLAINTIFF

V.

CIVIL ACTION NO. 3:10cv386DPJ-FKP

DAYS INN, ET AL

DEFENDANTS

**MOTION TO DISMISS PURSUANT TO RULE 4(m) OF THE FEDERAL
RULES OF CIVIL PROCEDURE, OR IN THE ALTERNATIVE, MOTION
TO EXTEND TIME IN WHICH TO ANSWER THE PLAINTIFF'S COMPLAINT**

COMES NOW, the Defendants, Days Inn, Baldez Patel, and Allen Parmar, specifically reserving all Defenses applicable to them under the Federal Rules of Civil Procedure, and files this, their Motion to Dismiss pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. In the alternative, the Defendants respectfully request that this Court grant additional time to file an Answer to the Plaintiff's Complaint. In support of its Motion, the Defendants would show unto the Court the following:

1.

On July 8, 2010, the Plaintiff filed this action in the United States District Court for the Southern District of Mississippi, Jackson Division, against the following Defendants: Days Inn, Baldez Patel, Allen Parmar, Unknown Female Defendant, the Ridgeland Police Department, the City of Ridgeland, the State of Mississippi, and Unknown Officer.

2.

The Days Inn, Unknown Female Doe #1, Ridgeland Police Department, City of Ridgeland, State of Mississippi, Police Officer Doe #2 have not been served with process as of the filing of this Motion. The Summons issued to Allen Parmar was received by the Days Inn Assistant Manager, Allen Patel. The Summons issued to Baldez Patel was also served on the Assistant Manager, Allen

Patel. These Summonses were served on January 26, 2011.

3.

Notwithstanding that the Plaintiff has still not properly effected service of process on Baldez Patel and Allen Parmar, as indicated in the Plaintiff's Complaint, the Summonses issued and served to Allen Patel was served 198 days after the Complaint was filed, in violation of Rule 4(m) of the Federal Rules of Civil Procedure. See Summonses attached hereto as Exhibit "A."

4.

Not only did the Plaintiff fail to serve the Defendants within 120 days of filing of her Complaint, the Plaintiff did not even attempt to have the Summonses issued until January 12, 2011, approximately 184 days after filing her Complaint.

5.

Rule 4(m) is abundantly clear. Rule 4(m) provides that:

"(m) Time Limit for Service. If a defendant is not served within 120 days after the complaint is filed, the court - - on motion or on its own, after notice to the plaintiff - - must dismiss the action without prejudice against the defendant, or order that service be made within a specified time. But, if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under Rule 4(f) or Rule 4(j)(1).

6.

In this case, the Defendants respectfully request that this Court dismiss this lawsuit without prejudice based upon the Plaintiff's failure to timely serve the Defendants. Clearly, good cause cannot be shown, as the Summons was not even issued until well after the 120 days had elapsed.

7.

In the alternative, should the Court not dismiss the Plaintiff's Complaint, the Defendants would request that they be given sufficient time to file an Answer to the Plaintiff's Complaint.

WHEREFORE, PREMISES CONSIDERED, the Defendants respectfully request that this Court order a dismissal of this action with all costs assessed to the Plaintiff, or in the alternative, for the Court to grant the Defendants additional time to file an Answer to the Complaint.

Respectfully submitted,

NATIONWIDE INSURANCE COMPANY

BY: s/ Patrick M. Tatum
PATRICK M. TATUM

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CERTIFICATE OF SERVICE

I hereby certify that on February 9, 2011, I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification to the following, and sent via United States Mail, postage prepaid, a copy of the following:

Veronica McCallup
3100 big Dalton Ave. #170
Baldwin Park, CA 91706

s/ Patrick M. Tatum
PATRICK M. TATUM